



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, FIRST SESSION

Vol. 153

WASHINGTON, MONDAY, MARCH 19, 2007

No. 47

Senate

The Senate met at 2 p.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray:

Lord, You have promised to work for the good of those who love You. Work in the lives of our lawmakers, strengthening them for every problem, trial, and temptation they face. Open their eyes to see Your hand at work even in adversity and keep them faithful to You.

Lord, may their lives become models of godly living as You empower them to live worthy of Your Name. Help them to be quick to hear, slow to speak, and slow to become angry. Be their refuge and strength, an ever present help in trouble. Empower them to maintain justice and to constantly do what is right. Teach them Your ways and give them Your peace.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 19, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. PRYOR thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

FIRING OF U.S. ATTORNEYS

Mr. REID. Mr. President, in today's Congressional Weekly, a respected publication we get back there, there is a column on the last page by Craig Crawford which I think is quite illuminating. It is entitled "The Firing Squad Backfires."

The fingerprints of the President's top advisers are all over the prosecutors' firing scandal, which means trouble for Bush.

Here is the first sentence:

Of all the scandals that increasingly bedevil George W. Bush's Presidency, none has more direct ties to the President than the flap over firing Federal prosecutors.

I rise today to express my strong support of S. 214, Senator FEINSTEIN's legislation to strengthen the independence of U.S. attorneys. There is growing evidence that the Bush administration fired Federal prosecutors for improper partisan reasons. This legislation is needed to protect the integrity of the Federal criminal justice system and the autonomy of the chief Federal prosecutors across the country.

The U.S. attorney scandal is another example of the arrogance of power. As Lord Acton said, power tends to corrupt, and absolute power tends to corrupt absolutely. For too long, the Bush administration—shielded from oversight by a Republican-dominated Congress—enjoyed absolute power, and they abused it.

After all, this was a President who won two elections by the barest of margins, first by the Supreme Court. Yet after 9/11, instead of uniting the country, he has chosen to push the envelope of his authority. On everything from the runup to the war in Iraq, to the plan to destroy Social Security, to the use of warrantless wiretapping, this administration has governed without compromise.

The political purge of U.S. attorneys is only the latest example of this President's unhealthy disregard for checks and balances. Speedy passage of this bill is only the first step the Senate must take to deal with the administration's dangerous power grab.

We need to get to the bottom of this scandal to find out why these U.S. attorneys were fired. We need to find out whether the Attorney General and his deputies testified truthfully when they first explained the firings to Congress and the American people.

Federal prosecutors are enormously powerful individuals. They are the embodiment of Federal criminal law. They make life-and-death decisions about who to prosecute and who should receive leniency. Their discretion is largely unreviewable. They must be permitted to carry out their solemn duties without any political interference.

No one disputes the authority of the President to name U.S. attorneys at the beginning of his term, subject to the advice and consent of the Senate. But it is unprecedented that U.S. attorneys be terminated in the middle of a Presidential term without proper cause. It is unacceptable for U.S. attorneys to be replaced because they were perceived by the White House to be insufficiently partisan or too aggressive in prosecuting public corruption.

It appears that administration officials took advantage of a provision that they insisted be included in the

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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PATRIOT Act reauthorization conference report last year. Now it is becoming clear why they stuck that provision in there. This was a plan they had for some time. That law reversed a longstanding procedure that allowed the chief Federal judge in the Federal district court to appoint a temporary replacement while the permanent nominee undergoes Senate confirmation. The Feinstein bill simply restores the pre-PATRIOT Act procedure.

Conflicting testimony and recently released e-mails strongly suggest the American people are not getting from the Bush administration the full story about this scandal.

In the State of Nevada, as an example, Daniel Bogden, a highly respected career prosecutor, was forced to step down. His chosen vocation in life was to be a Federal prosecutor. He worked as an assistant U.S. attorney for a significant period of time before chosen to be the U.S. attorney by a Republican, JOHN ENSIGN, and by the President, who sent his name to us. We were initially told that Bogden and others were fired for "performance-related reasons." But that explanation proved to be totally bogus. In fact, Dan Bogden's personnel review was glowing. We still don't know why Dan Bogden was fired. What we do know is under the new PATRIOT Act provision, Mr. Bogden could be replaced by someone with no ties to Nevada, and with no input from the Senate. The damage done to Bogden personally is irreparable. He can't work now as assistant U.S. attorney. That is part of the process. That is too bad. He is a fine man whose reputation has been besmirched.

Meanwhile, we learned of a scheme hatched in the White House to replace all U.S. attorneys. At least one U.S. attorney has stated he was forced to resign because he refused to bend to political pressure regarding ongoing investigations. Others were fired under circumstances that raise the same question. In the State of Arkansas, the U.S. attorney was fired and replaced by one of Karl Rove's underlings.

The Attorney General and his deputies told Congress these firings were not politically motivated. But according to newly released e-mails, White House political operatives such as Mr. Rove were involved in the decision-making. Kyl Sampson, who eventually became Chief of Staff to Attorney General Gonzales, wrote an e-mail that distinguished between those U.S. attorneys who were "loyal Bushies" and those who were not. Dan Bogden and other U.S. attorneys who were fired last December were not "loyal Bushies."

What I am worried about—and it hasn't come out yet—is what about those who were loyal Bushies? Were these people prosecuting people because of the political involvement of the White House? Perhaps so.

The real question is whether being a "loyal Bushie" meant letting partisan consideration poison law enforcement

decisions. Do prosecutors who are "loyal Bushies" go easy on Republican corruption? Do they bring cases against Democrats without legal justification? The actions of the Bush administration call into question every decision by Federal prosecutors in corruption cases across the country.

I applaud the efforts of Senator FEINSTEIN, who wrote this legislation and spoke about it early on. I also applaud the efforts of Senators SCHUMER and LEAHY, as well as colleagues on the other side of the aisle who are committed to getting the truth in this matter. I strongly urge the Senate to pass this piece of legislation. Simply put, we need to begin to keep politics out of the Federal criminal justice system, which is the way it has always been.

SCHEDULE

Mr. REID. Mr. President, today, following the remarks of the leaders, the Senate will immediately proceed to S. 214, the U.S. attorneys legislation. Last week, we were able to agree to a unanimous consent that will govern consideration of this bill.

There will be no rollcall votes today. We will, however, have three votes beginning at 11:30 a.m. tomorrow morning. These votes will be with respect to amendments to the U.S. attorneys bill and then passage of the bill.

Following the recess for the party conferences on Tuesday, the Senate will begin to consider the concurrent budget resolution, which was reported by the Budget Committee to the Senate floor last Thursday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

PRESERVING UNITED STATES ATTORNEY INDEPENDENCE ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of S. 214.

The clerk will report the bill by title. The assistant legislative clerk read as follows:

A bill (S. 214) to amend chapter 35 of title 28, United States Code, to preserve the independence of the United States Attorneys.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment, as follows:

(The part of the bill intended to be stricken is shown in boldface brackets and the part of the bill intended to be inserted is shown in *italic*.)

S. 214

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preserving United States Attorney Independence Act of 2007".

SEC. 2. VACANCIES.

[Section 546 of title 28, United States Code, is amended to read as follows:

"§ 546. Vacancies

"The United States district court for a district in which the office of the United States attorney is vacant may appoint a United States attorney to serve until that vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.".]

Section 546 of title 28, United States Code, is amended by striking subsection (c) and inserting the following:

"(c) A person appointed as United States attorney under this section may serve until the earlier of—

"(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

"(2) the expiration of 120 days after appointment by the Attorney General under this section.

"(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court."

SEC. 3. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—

(1) IN GENERAL.—Any person serving as a United States attorney on the day before the date of enactment of this Act who was appointed under section 546 of title 28, United States Code, may serve until the earlier of—

(A) the qualification of a United States attorney for such district appointed by the President under section 541 of that title; or

(B) 120 days after the date of enactment of this Act.

(2) EXPIRED APPOINTMENTS.—If an appointment expires under paragraph (1), the district court for that district may appoint a United States attorney for that district under section 546(d) of title 28, United States Code, as added by this Act.

The ACTING PRESIDENT pro tempore. Under the previous order, the committee-reported amendment is agreed to and the motion to reconsider is laid upon the table.

Mrs. FEINSTEIN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I rise today to speak in support of S. 214, the bill the leader just referred to. This is a bill that simply reinstates the Senate's role in the confirmation process of U.S. attorneys. It is a bill I introduced with Senator LEAHY on January 9, 2007, days after I first learned in early December that officials from main Justice called a handful of U.S. attorneys from around the country and forced them to resign their positions without cause.